

CHAPTER 344

PARTITION FENCES

344.01 FENCE VIEWERS.

HISTORY. 1860 c. 14 art. 3 s. 3; G.S. 1866 c. 10 s. 14; G.S. 1878 c. 10 s. 15; G.S. 1894 s. 929; R.L. 1905 s. 2748; G.S. 1913 s. 6016; 1921 c. 25 s. 1; G.S. 1923 s. 7248; M.S. 1927 s. 7248.

The plaintiff in an action for a permanent injunction to which he was not found entitled, was not entitled to an injunction restraining the defendant from interfering with a division line fence built by the plaintiff upon land occupied by the defendant for many years until a true boundary shall be determined in subsequent litigation. *Jones v Williams*, 165 M 415, 206 NW 654.

Government surveys do not mark section centers. The center of a section is the intersection of a straight line from the quarter corner at the north to the quarter corner at the south, with a straight line from the quarter corner at the east to the quarter corner at the west. *Lunz v Sandmeier*, 172 M 338, 215 NW 426.

Where townships have been dissolved, the duty of the supervisors devolves on the county board, which may compel construction of party line fences. OAG Sept. 24, 1936 (434a-4).

Where land has been forfeited to the state for taxes, provisions relating to partition fences do not apply. OAG May 23, 1938 (631h).

344.02 LEGAL FENCE; REQUISITIES; VIEWERS OF PARTITION FENCES.

HISTORY. R.S. 1851 c. 11 s. 1; P.S. 1858 c. 8. 234; G.S. 1866 c. 18 s. 1; 1877 c. 107 s. 1; G.S. 1878 c. 18 ss. 1, 2; G.S. 1894 ss. 2054, 2055; R.L. 1905 s. 2749; G.S. 1913 s. 6017; 1915 c. 282; 1917 c. 408 s. 1; G.S. 1923 s. 7249; M.S. 1927 7249.

The liability of railroad companies. *Fitzgerald v St. P. M. & M. Ry. Co.* 29 M 340, 13 NW 168.

In the absence of fraud or mistake, the adjudication of supervisors upon the sufficiency of a fence erected as a lawful fence and of its value is final. *Oxborough v Boesser*, 30 M 1, 13 NW 906.

As respects the location of a partition fence, it is enough that it is on a line which the parties agree upon as the true dividing line between the land, and as to the place where the fence should be built. *Oxborough v Boesser*, 30 M 1, 13 NW 906.

It is not conclusive evidence of contributory negligence for the plaintiff to allow his domestic animals to run in a pasture adjoining a railroad, although he knew the dividing fence, which the railroad company was bound to maintain, to be defective. *Evans v St. P. & S. C.* 30 M 489, 16 NW 271.

When the building of a fence would have prevented an accident to domestic animals, then the negligence of a railroad company in not fencing its road is the cause of injury and the company is liable, regardless of the species of the animals. In case of sheep or swine this would be a question of fact, depending on size of the animals. *Halverson v M. St. L. Ry. Co.* 32 M 88, 19 NW 392.

It was the duty of the defendant railway company to fence its tracks at the point where the boy first walked upon the tracks, and at the point a short distance away where he was injured, and the mere fact that these points were within the yard limits of the defendant company did not relieve it of the duty to fence its tracks. *Nickolson v N. P.* 80 M 508, 83 NW 454.

A fence constructed in accordance with the provisions of this section is a sufficient compliance with the statutes requiring a railroad company to fence.

its right of way even though the road so fenced extends parallel to and within 100 feet of a public highway. *Ellington v G. N. Ry. Co.* 96 M 176, 104 NW 827.

In the instant case, although the defendant failed to fence its right of way as required by statute, the circumstances are such that the failure to fence was not the proximate cause of the death of a boy nine years old, killed while stealing a ride on defendant's freight train. *Jeanette v M. St. P. & S. Ry. Co.* 130 M 513, 153 NW 1086.

Where A fences his land on three sides and adjoining owner on fourth side, he is required to erect and maintain a fence of right character and quality on one-half of the fourth side. OAG June 27, 1938 (631f).

A bull in a pasture protected by a legal fence, which he is known to be in the habit of breaching, is deemed to be "running at large". OAG May 25, 1944 (228d).

A farmer wishing to enclose his farm may build one-half of a boundary fence and proceed against the owner or owners of adjoining land to complete the boundary. OAG July 5, 1944 (613h).

344.03 EXPENSE; EQUAL SHARES.

HISTORY. R.S. 1851 c. 11 s. 2; P.S. 1858 c. 8 s. 235; G.S. 1866 c. 18 s. 2; G.S. 1878 c. 18 s. 3; 1887 c. 50 s. 1; 1889 c. 76 s. 1; G.S. 1894 s. 2056; R.L. 1905 s. 2750; 1913 c. 525 s. 1; G.S. 1913 s. 6018; 1915 c. 173; G.S. 1923 s. 7250; M.S. 1927 s. 7250.

The fact that defendant's track was not fenced, the law not requiring it as of that time, did not impose on the railroad company, as to cattle unlawfully on its tracks, the duty of any greater care than if it had been fenced. *Locke v St. P. & Pac. Ry. Co.* 15 M 350 (283).

Land, part woodland, meadow, and swamp, adjoining other lands not under plow, is not "improved" sufficiently to impose an obligation to build a joint line fence. OAG April 28, 1932.

Where a municipality occupies land outside the village limits used in connection with the village water system, it is legally bound to share in the expenses of needed partition fences. OAG March 24, 1934.

Lands separated by a cartway established by statute or by dedication do not require partition fences, but where a third person using the cartway has a mere license, a partition fence is required. OAG July 5, 1934 (377b-10(e)).

344.04 NEGLECT TO BUILD OR REPAIR; RIGHTS OF COMPLAINANT.

HISTORY. R.S. 1851 c. 11 s. 3; P.S. 1858 c. 8 s. 236; G.S. 1866 c. 18 s. 3; G.S. 1878 c. 18 s. 4; G.S. 1894 s. 2057; R.L. 1905 s. 2751; G.S. 1913 s. 6019; 1915 c. 173; G.S. 1923 s. 7251; M.S. 1927 s. 7251.

Laws 1895, Chapter 249, providing for the location of section and quarter section corners by the county surveyor on the application of the resident owners of the section, is not within the exercise of the taxing power of the state and is unconstitutional because it deprives the land owners of their property without due process of law. *Davis v Board*, 65 M 310, 67 NW 997.

344.05 REPAIR COSTS RECOVERABLE.

HISTORY. R.S. 1851 c. 11 s. 4; P.S. 1858 c. 8 s. 237; G.S. 1866 c. 18 s. 4; G.S. 1878 c. 18 s. 5; G.S. 1894 s. 2058; R.L. 1905 s. 2752; G.S. 1913 s. 6020; 1915 c. 173; G.S. 1923 s. 7252; M.S. 1927 s. 7252.

Proceedings by town supervisors for an assignment of the respective shares of a partition fence required to be maintained by the occupants of adjoining lands, must be taken against and in the name of party sought to be charged, and proceedings against "occupant" upon notices served on the occupant will not authorize a recovery against an "owner" not named or joined. *McClay v Clark*, 42 M 363, 44 NW 255.

344.06 CONTROVERSY; DECISION AND DIRECTION BY FENCE VIEWERS.

HISTORY. R.S. 1851 c. 11 s. 5; P.S. 1858 c. 8 s. 238; G.S. 1866 c. 18 s. 5; G.S. 1878 c. 18 s. 6; G.S. 1894 s. 2059; R.L. 1905 s. 2753; G.S. 1913 s. 6021; G.S. 1923 s. 7253; M.S. 1927 s. 7253.

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The party erecting the portion of a partition fence assigned to another is entitled to recovery double the ascertained value of fence erected, but not double the fees of the supervisors. In the absence of fraud or mistake, the adjudication of supervisors is final. *Oxborough v Boesser*, 30 M 1, 13 NW 906.

344.07 FAILURE TO MAINTAIN; PRIVILEGE OF COMPLAINANT.

HISTORY. R.S. 1851 c. 11 s. 6; P.S. 1858 c. 8 s. 239; G.S. 1866 c. 18 s. 6; G.S. 1878 c. 18 s. 7; G.S. 1894 s. 2060; R.L. 1905 s. 2754; G.S. 1913 s. 6022; G.S. 1923 s. 7254; M.S. 1927 s. 7254.

344.08 DIVISION OF FENCES; RECORD; BINDING ON HEIRS AND ASSIGNS.

HISTORY. R.S. 1851 c. 11 s. 7; P.S. 1858 c. 8 s. 240; G.S. 1866 c. 18 s. 7; G.S. 1878 c. 18 s. 8; G.S. 1894 s. 2061; R.L. 1905 s. 2755; G.S. 1913 s. 6023; G.S. 1923 s. 7255; M.S. 1927 s. 7255.

A parol contract as to a division fence acted upon by the parties thereto, is binding upon them, but not on grantees and lessees who have not recognized and acted upon it. *Tuebert v Sons*, 116 M 195, 133 NW 467.

344.09 PARTY ERECTING MORE THAN SHARE.

HISTORY. R.S. 1851 c. 11 s. 8; P.S. 1858 c. 8 s. 241; G.S. 1866 c. 18 s. 8; G.S. 1878 c. 18 s. 9; G.S. 1894 s. 2062; R.L. 1905 s. 2756; G.S. 1913 s. 6024; G.S. 1923 s. 7256; M.S. 1927 s. 7256.

344.10 LANDS BOUNDED BY STREAM.

HISTORY. R.S. 1851 c. 11 ss. 10, 11; P.S. 1858 c. 8 ss. 243, 255; G.S. 1866 c. 18 ss. 10, 11; G.S. 1878 c. 18 ss. 11, 12; G.S. 1894 ss. 2064, 2065; R.L. 1905 s. 2757; G.S. 1913 s. 6025; G.S. 1923 s. 7257; M.S. 1927 s. 7257.

344.11 LANDS OCCUPIED IN COMMON.

HISTORY. R.S. 1851 c. 11 s. 12; P.S. 1858 c. 8 s. 245; G.S. 1866 c. 18 s. 12; G.S. 1878 c. 18 s. 13; G.S. 1894 s. 2066; R.L. 1905 s. 2758; G.S. 1913 s. 6026; G.S. 1923 s. 7258; M.S. 1927 s. 7258.

344.12 VIEWERS TO FIX TIME FOR BUILDING.

HISTORY. R.S. 1851 c. 11 s. 13; P.S. 1858 c. 8 s. 246; G.S. 1866 c. 18 s. 13; G.S. 1878 c. 18 s. 14; G.S. 1894 s. 2067; R.L. 1905 s. 2759; G.S. 1913 s. 6027; G.S. 1923 s. 7259; M.S. 1927 s. 7259.

344.13 RULE WHEN LANDS ARE FIRST ENCLOSED.

HISTORY. R.S. 1851 c. 11 s. 15; P.S. 1858 c. 8 s. 248; G.S. 1866 c. 18 s. 15; G.S. 1878 c. 18 s. 16; G.S. 1894 s. 2069; R.L. 1905 s. 2762; G.S. 1913 s. 6028; G.S. 1923 s. 7260; M.S. 1927 s. 7260.

Whenever the owner of unoccupied lands between which and the enclosed lands of an adjacent occupying proprietor there is a partition fence, which has been theretofore erected by the latter, encloses his own for a pasture, and begins occupying them for that purpose so that he receives an equal benefit from such partition fence, he becomes liable to pay to the proprietor of such fence one-half the value thereof. *Boenig v Hornberg*, 24 M 307.

344.14 VIEWERS WHEN FENCE ON TOWN LINE.

HISTORY. R.S. 1851 c. 11 s. 16; P.S. 1858 c. 8 s. 249; G.S. 1866 c. 18 s. 16; G.S. 1878 c. 18 s. 17; G.S. 1894 s. 2070; R.L. 1905 s. 2763; G.S. 1913 s. 6029; G.S. 1923 s. 7261; M.S. 1927 s. 7261.

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344.15 WHERE FENCE RUNS INTO WATER.

HISTORY. R.S. 1851 c. 11 s. 17; P.S. 1858 c. 8 s. 250; G.S. 1866 c. 18 s. 17; G.S. 1878 c. 18 s. 18; G.S. 1894 s. 2071; R.L. 1905 s. 2764; G.S. 1913 s. 6030; G.S. 1923 s. 7262; M.S. 1927 s. 7262.

344.16 DIVISION OR RECORDED AGREEMENT RUNS WITH THE LAND.

HISTORY. R.S. 1851 c. 11 s. 18; P.S. 1858 c. 8 s. 251; G.S. 1866 c. 18 s. 18; G.S. 1878 c. 18 s. 19; G.S. 1894 s. 2072; R.L. 1905 s. 2765; G.S. 1913 s. 6031; G.S. 1923 s. 7263; M.S. 1927 s. 7263.

344.17 NEGLIGENCE OF VIEWER TO PERFORM DUTY; PENALTY.

HISTORY. R.S. 1851 c. 11 s. 21; P.S. 1858 c. 8 s. 253; G.S. 1866 c. 18 s. 20; G.S. 1878 c. 18 s. 21; G.S. 1894 s. 2074; R.L. 1905 s. 2766; G.S. 1913 s. 6032; G.S. 1923 s. 7264; M.S. 1927 s. 7264

344.18 COMPENSATION OF VIEWERS.

HISTORY. R.S. 1851 c. 11 s. 22; P.S. 1858 c. 8 s. 254; G.S. 1866 c. 18 s. 21; G.S. 1878 c. 18 s. 22; G.S. 1894 s. 2075; R.L. 1905 s. 2767; G.S. 1913 s. 6033; G.S. 1923 s. 7265; M.S. 1927 s. 7265.

344.19 VIEWERS IN COUNTIES NOT DIVIDED.

HISTORY. G.S. 1866 c. 18 s. 22; G.S. 1878 c. 18 s. 23; 1879 c. 37; G.S. 1894 s. 2076; R.L. 1905 s. 2768; G.S. 1913 s. 6034; G.S. 1923 s. 7266; M.S. 1927 s. 7266.

Where townships have been dissolved, the county commissioners of the county may compel construction of party line fences in the territory. OAG Sept. 24, 1936.